FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 461

WILLIAM GREENOUGH and GEORGE HENRY WARREN, JR., Trustees,

Appellants,

vs.

TAX ASSESSORS OF THE CITY OF NEWPORT; and EDWARD L. LEAHY, Tax Administrator of the State of Rhode Island.

APPELLANTS' REPLY BRIEF

WILLIAM GREENOUGH,
WILLIAM R. HARVEY,
Attorneys for Petitioners.

J. RUSSELL HAIRE,
WILLIAM R. HARVEY,
WILLIAM GREENOUGH,

SHEFFIELD & HARVEY,
Newport, R. I.
Of Counsel.

INDEX

Table of Cases

	PAGE
People ex rel. Beaman *v.* Feitner, 168 N. Y. 360, 61 N. E. 280	1
Crocker *v.* City of Malden, 229 Mass., 516, 118 N. E. 527 (1916)	2
Howard Fire Ins. Co. *v.* Chase, 5 Wall. 509	2
Newcomb *v.* Paige, 224 Mass., 516, 113 N. E. 458	2
Price *v.* Hunter, 34 Fed. Rep. 355	3
Welch *v.* City of Boston, 221 Mass., 155, 109 N. E. 174 (1915)	2
Wilbur *v.* Almy, 12 Howard 180	2
Winslow *v.* Baltimore & Ohio Railroad Co., 188 U. S. 646	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 461

WILLIAM GREENOUGH and GEORGE HENRY WARREN, JR., Trustees,

Appellants,

vs.

TAX ASSESSORS OF THE CITY OF NEWPORT; and EDWARD L. LEAHY, Tax Administrator of the State of Rhode Island.

APPELLANTS' REPLY TO BRIEF FOR APPELLEES

No case is cited by the appellees in which an *ad valorem* tax has been sustained against one of two or more trustees except where that one of the trustees lives in the domiciliary state of the testator or where the *res* is in the same state in which such one of the trustees is a resident.

On page 14 of their brief the appellees cite the case of *People ex rel. Beaman* v. *Feitner*, 168 N. Y. 360, 61 N. E. 280, quoting from an erroneous statement in the note on page of 67 A. L. R. that the case arose "under the will of a New Jersey testator."

An examination of the records of that estate in the Surrogates Court of New York, a exemplified copy of which is in the possession of the appellants, shows that the testator executed a will and three codicils, in each of which between 1888 and 1896 he described himself as of the City of New York and the letters issued on November 25, 1897, by the Surrogates Court recite "and the said deceased

having been at the time of his death a resident of the County of New York."

On page 14 of their brief, appellees also cite *Welch* v. *City of Boston*, 221 Mass. 155, 109 N. E. 174 (1915), which sustained a tax against the two sole trustees of a Maine estate where the securities were for the benefit of a California beneficiary.

In that case all of the trustees were residents of Boston and there was no question of the severability of the ownership jointly or as a unit by the trustees.

In fact, the decision of *Newcomb* v. *Paige*, 224 Mass. 516, 113 N. E. 458, cited on page 10, 12 and 19 of appellants brief, where the question of joint ownership by trustees arose was decided by the same court, the opinion was written by the same Chief Justice in the year after the decision in the Welch case.

In the case of *Crocker* v. *City of Malden*, 229 Mass. 516, 118 N. E. 527 (1916), the creator of the trust was a resident of Massachusetts and the *res* was located there. It was the domiciliary state which also controlled the property. In construing the Massachusetts statute the court uses the following significant language:

> "The part thereof which provides that the personal estate shall be assessed 'in equal portions' where the trustees reside in different places (*within the commonwealth*), is a recognition of a rule existing before the statute and of the general principle, which underlies our system of taxation, that all personal property shall be assessed to the owner in the city or town in which he is an inhabitant. Hardy *v.* Yarmouth, 6 Allen, 277."

The United States Court recognizes the principle that co-trustees act only as a unit.

Wilbur v. *Almy*, 12 Howard 180;
Howard Fire Ins. Co. v. *Chase*, 5 Wall. 509;
Winslow v. *Baltimore & Ohio Railroad Co.*, 188 U. S. 646.

Appellees also cite the case of *Adman* v. *Honey* on pages 19 and 20. In that case sole trustee was Honey, a Rhode Island resident appointed by a South Carolina Court of a South Carolina trust. He invested in mortgages in Newport, Rhode Island. There again the Court had jurisdiction over a sole trustee who invested in Rhode Island property (indirectly in real estate) so that the Court had jurisdiction over both the trustee and the trust *res*. All the cases cited by the Court in that case are cases where the *res* is a mortgage within the state where the trustee resided. This distinction is recognized by all of the courts (see *Lewis* v. *City of Chester*, cited on pp. 13 and 14 of appellants brief), and this is the same situation as arose in *Price* v. *Hunter*, 34 Fed. Rep. 355 cited on page 13 of appellees brief.

Respectfully submitted,

WILLIAM GREENOUGH,
WILLIAM R. HARVEY,
Attorneys for Petitioners.

J. RUSSELL HAIRE,
WILLIAM R. HARVEY,
WILLIAM GREENOUGH,
SHEFFIELD & HARVEY,
Newport, R. I.,
Of Counsel.